

1                   IN THE DISTRICT COURT OF THE NINETEENTH  
2                   JUDICIAL DISTRICT FOR THE STATE OF MONTANA  
3                   IN AND FOR THE COUNTY OF LINCOLN  
4  
5                   ROBERT D. NELSON and NETTIE        )  
6                   JEAN NELSON, husband and wife,    ) Cause No. DV-98-107  
7                   Plaintiffs,                            )  
8                   vs                                      )  
9                   W.R. GRACE & CO.-Conn, a        )  
10                  Connecticut corporation, and     )  
11                  DOES I-IV,                              )  
12                  Defendants.                            )  
13                  

14                   D E P O S I T I O N

15                   OF

16                   ROBERT D. NELSON

17                  (On Behalf of the Defendant)

18

19                  Taken at the Law Offices of  
20                  McGarvey, Heberling, Sullivan and McGarvey  
21                  745 Main Street  
22                  Kalispell, Montana  
23                  Thursday, December 9, 1999  
24                  9:00 a.m.

25                  Reported by Debra M. Hedman, RPR, RMR, and Notary  
Public for the State of Montana, Flathead County.

1 A Yes.

2 Q Also if you would wait until after I  
3 finish my question before you begin your answer,  
4 likewise that will help Deb take down everything  
5 correctly and you and I won't be talking at the same  
6 time. Okay?

7 A Yes.

8 Q Finally, and probably most important,  
9 Mr. Nelson -- or Bob, you and I need to communicate  
10 with one another. And so please don't be bashful.  
11 If you don't completely understand a question that  
12 I'm asking, go ahead and tell me that. I'll  
13 rephrase it or otherwise change it so that you do  
14 understand it so that you and I are confident that  
15 you're answering the question that's being asked.  
16 Okay?

17 A Yes.

18 Q Bob, how would you generally describe your  
19 health as you sit here today?

20 A Oh, except for being short of breath, I'm  
21 in good health. I just -- I can't breathe or walk  
22 or anything like that.

23 Q Okay. And when did you first start  
24 noticing having shortness of breath problems?

25 A About three or four years ago. We went

1 fishing. I was supposed to catch up to them and I  
2 couldn't. I just -- And I never noticed it before  
3 that because I was working all the time and --

4 Q And at that time, what did you attribute  
5 that shortness of breath to? Anything?

6 A No, I just thought I was getting old.

7 Q Had you gained any weight or anything like  
8 that?

9 A No. Not at that time, no.

10 Q How about your past smoking? Did you  
11 think that the smoking had anything to do with it?

12 A I hadn't smoked for quite a while.  
13 I think in '93 is the last time I ever had a  
14 cigarette.

15 Q So you didn't think it was the past  
16 smoking that had started causing the shortness of  
17 breath?

18 A No, I never smoked that much.

19 Q When you say that you suffer a shortness  
20 of breath, is that a continual thing all day or only  
21 when you're active?

22 A Well, when you do anything. I mean, even  
23 going to the bathroom, in the back, you get -- you  
24 can't walk very far.

25 Q Has it gotten progressively worse over the

1 last three or four years?

2 A Oh, yeah. Yes, sir.

3 Q Bob, could you put some kind of a

4 framework on that? I mean, has it gotten twice as  
5 bad, three times as bad over the last three or four  
6 years?

7 A I think it has gotten at least twice as  
8 bad in the last three years.

9 Q Are you working anymore, Bob?

10 A No, sir.

11 Q Are you retired?

12 A Yes, sir.

13 Q How come you retired?

14 A I couldn't breathe any more.

15 Q And what were you doing?

16 A I was a tenant on a transfer station where  
17 they dump their garage, picked it up and hauled it  
18 out to the main landfill.

19 Q And what -- What does a tenant do?

20 A Just make sure that they get it in the  
21 right dumpsters and they don't get it on the ground  
22 and they don't throw stuff in there that they are  
23 not supposed to.

24 Q Does it require much manual labor?

25 A No, it just -- You just copy down their

1           A    There is nothing around there that you  
2   wouldn't have to drive a hundred miles two ways  
3   every day, so you just -- if you went to look for  
4   a job, you would more than likely have to walk up  
5   and down steps and stuff like that and that just  
6   don't --

7           Q    But have you looked for anything, Bob?

8           A    No, I have had some jobs offered me, but  
9   it was nothing that I could do.

10          Q    What types of jobs were offered to you?

11          A    Driving a truck and running front-end  
12   loaders and stuff.

13          Q    Why do you think you couldn't drive truck?

14          A    For one thing it's quite a bit of manual  
15   labor and turning your arms and -- You just don't  
16   sit there. A lot of people think you do, but you  
17   don't.

18          Q    Would your answer be true with regard to a  
19   front-end loader?

20          A    Oh, yeah, it would be more on a front-end  
21   loader. You're busy all the time in a front-end  
22   loader.

23          Q    So if you're in a sedentary position, Bob,  
24   and you're just moving your arms and feet, that  
25   causes you shortness of breath also?

1 A Yes, sir.

2 Q Is there any particular time of the day,  
3 Bob, that your shortness of breath seems to be worse  
4 than others?

5 A No, it doesn't make any difference.

6 Q Does it -- It just gets worse with  
7 increase of activity?

8 A Right.

9 Q But like, as you sit here right now, Bob,  
10 you're not doing anything, you're sitting in a  
11 chair, do you have a shortness of breath problem?

12 A I did when I first sat down and it's  
13 getting to be all right now.

14 Q So if you had been sitting for a while,  
15 you don't feel any kind of problem with shortness of  
16 breath?

17 A Not as long as you're not doing anything.

18 Q Do you exercise at all?

19 A Not anymore.

20 Q When is the last time you had a regular  
21 exercise type program that you did?

22 A Oh, when I was working for Morrison  
23 Knutson out there at the mine.

24 Q What did you do then?

25 A I walked quite a bit.

1 Q Since five or six years ago when you  
2 performed that miracle mechanic work, Bob, any other  
3 vehicles you worked on besides your Jeep, your  
4 wife's '77 LTD, your mobile home?

5 A No, I don't remember if -- If there was, I  
6 don't -- My friend has got an International Scout,  
7 but it usually runs pretty good. We had to change  
8 the oil and stuff like that in it, but other than  
9 that, it's just --

10 Q Okay. So Bob, you haven't worked  
11 extensively on cars for about five or six years?

12 A No, no.

13 Q Bob, besides the dancing, fishing,  
14 hunting, and working on cars, anything else that you  
15 used to do that you can't do now?

16 A No, I just -- I used to be a pretty fair  
17 carpenter, but I haven't did that for years. In  
18 fact, I never liked doing it so I don't even mention  
19 it. I just --

20 Q Okay. Bob, when did you work at the  
21 Zonolite mine?

22 A When or where?

23 Q When?

24 A When? Boy, that is something I don't  
25 remember too much about that -- that's -- I don't

1 remember the dates. They got it wrote down --

2 Q Okay.

3 A -- at the office.

4 Q Okay. Do you remember who hired you?

5 A God, I should. No, sir, I don't remember  
6 who it was.

7 Q Do you remember who your supervisor was  
8 when you first started there?

9 A I think his name was Care.

10 Q Care?

11 A Yeah. I don't remember any more what his  
12 first name was. God, that was a long time ago. No,  
13 I don't. I remember when I got up into the mine  
14 part, it was Pappy Welch was the foreman up there.

15 Q Pappy Welch?

16 A Yeah, that was what he -- I don't remember  
17 what his first name was, but everybody called him  
18 Pappy.

19 Q Was that a different person than Shorty  
20 Welch?

21 A Yeah, Shorty Welch worked in the  
22 warehouse.

23 Q But Pappy Welch wasn't your initial  
24 supervisor?

25 A Not until I got up in the mine.

1 Q Where did you work at first?

2 A Clean-up down on the construction part  
3 of it.

4 Q That wasn't in the dry mill?

5 A A lot of it was in the dry mill and very  
6 little in the wet mill because it never got very  
7 many spills in there.

8 Q So you would go in and clean up the  
9 spills?

10 A Yes, sir.

11 Q Do you remember who you worked with when  
12 you were working the clean-up with construction?

13 A Oh, man, there was so many of them that --  
14 it was -- I don't remember. I just -- It was a lot  
15 of people that worked there.

16 Q And were you working up there full-time?

17 A Yeah, when I first started it was  
18 full-time and then I guess they laid me off -- I  
19 guess. That was a long time ago.

20 Q You don't remember getting laid off?

21 A No. I --

22 Q Do you remember -- Well, never mind. When  
23 you were working on the clean-up crew up there, with  
24 construction, did you ever wear a respirator?

25 A No, hu-huh.

1 Q Did you ever see anyone else wear a  
2 respirator?

3 A I don't remember ever seeing one.

4 Q Do you ever remember seeing a respirator  
5 at any time up there --

6 A No, sir.

7 Q -- at the mine or the mill?

8 A No. I don't -- It just --

9 Q Do you remember, Bob, any other jobs you  
10 had up there?

11 A Yeah, I worked in the test lab.

12 Q What did you do in the test lab?

13 A Once every hour you would go around and --  
14 you had a bunch of trays that was about this big  
15 around (indicating), about eight inches, and you go  
16 around to different places in the dry mill and in  
17 the wet mill and you picked up samples and then you  
18 take them back to the lab.

19 And you had to run tests on them. And you  
20 stick them in these big burners, you know, and they  
21 would dry them out and pop the ore and see how much  
22 percentage that was getting from the ore. If you  
23 were lucky, the intercom worked and you called the  
24 dry mill and the wet mill and you told them how to  
25 set their machines. And if that wasn't working,

1 then you had to run back over there and tell them.

2 Q How long did you work in the test mill --  
3 or test lab? I'm sorry.

4 A I think they sent -- about four and a  
5 half, five months. I don't know.

6 Q When you were with the clean-up crew in  
7 construction, did you work around a lot of dust?

8 A Well, yeah, if you was outside or inside  
9 up there it was dusty.

10 Q Where was it most dusty, would you say?

11 A Around the dry mill.

12 Q Would that be in the dry mill?

13 A Yeah. Yes, sir.

14 Q Did you ever have trouble breathing in the  
15 dry mill because of the dust?

16 A I don't remember. That just -- Hell, I  
17 was in pretty good shape and I just -- I don't think  
18 it bothered me, but they never said anything about  
19 it, so --

20 Q You don't remember any discussion amongst  
21 any of the employees about the dust?

22 A Oh, everybody was always hollering about  
23 it when you had to go work in it, but there was  
24 never anything done about it. Just the hollering.

25 Q Do you ever recall, Bob, complaining about

1 it that was going to hurt you.

2 Q Okay. And you never asked anybody about  
3 that?

4 A I figured if it was something that was  
5 going to kill me eventually, I would think somebody  
6 would have said something about it, I thought.  
7 Otherwise I would have damn sure not been up there.

8 Q Do you ever remember having a chest x-ray  
9 taken when you were up there, Bob?

10 A I know I was supposed to have a chest  
11 x-ray taken when I went to work up there; but I'm  
12 sure I didn't. And then I think it was after that  
13 that they send a bunch of us down to the hospital to  
14 have chest x-rays, but I don't know whatever they  
15 did with them.

16 Q Did you ever ask anybody why you were  
17 having your chest x-rayed?

18 A Oh, yeah.

19 Q Who did you ask?

20 A The doctor, for one thing.

21 Q What did the doctor tell you?

22 A Well, they just -- they require it..  
23 We got two hours off and we went and drank beer.

24 Q Did you ask why they required it?

25 A Yeah, but they -- You know, they just said

1 it was required and that was the end of it. I don't  
2 even remember who the doctor was that authorized it  
3 because he had to go to the hospital to have it  
4 done.

5 Q Did you ask the doctor why it was  
6 required?

7 A Oh, yeah.

8 Q And the doctor never told you, either?

9 A No. He said it was required and that was  
10 it.

11 Q Did you ever ask anybody with W.R. Grace  
12 or with the predecessor company?

13 A No, I don't -- I don't remember. Only  
14 time of year you ever talk to anybody like that, if  
15 you were into the office to pick up your check or  
16 something, and you had to go into downtown and  
17 usually you grabbed that when you come through the  
18 door and out you went.

19 Ninty percent of the time the check was  
20 always -- you know, when you got ready to go on the  
21 bus, they always had them down there.

22 Q Okay. Did you ever see, Bob, anyone from  
23 the State there to investigate the mine?

24 A Never did that I ever remember, no.

25 Q Did you ever see any construction or other

1 work performed up there in an effort to reduce the  
2 dust conditions?

3 A Not at that time, no.

4 Q Did you ever hear of anyone getting sick  
5 because of the dust?

6 A No, I never -- I never paid any attention  
7 to that. I just --

8 Q Okay. You used to take the bus up there?

9 A Yes.

10 Q And the bus home?

11 A Yes. Down to the parking lot in town.

12 Q And you don't recall any of the employees  
13 ever talking about anybody getting sick up there  
14 because of the dust?

15 A No, I don't recall anybody saying anything  
16 about it.

17 Q You knew Shorty Welch?

18 A Yes, sir.

19 Q Did you know that he was suffering from  
20 lung problems when you were working up there?

21 A No, I didn't. I never associated with him  
22 that much. I think he worked warehouse.

23 Q What else did you do up there, Bob?

24 A Oh, I was a dump man and then I drove a  
25 Euc up there.

1 Q How long were you a dump man?

2 A I don't remember, but it was -- it wasn't  
3 very long until they was -- they was always  
4 shorthanded on the Eucs. They just put me on a --  
5 They found out I could drive a Euc and so they stuck  
6 me in that.

7 Q Was there much dust in your work as a Euc  
8 driver?

9 A Oh, yes. Especially if it hadn't rained  
10 for a while.

11 Q Was that mostly at the transfer points?

12 A Well, whenever they load you and whenever  
13 you dump and driving up and down the roads.

14 Q Bob, was the dust ever so bad that you  
15 used a handkerchief or anything to put over your  
16 mouth and nose?

17 A I don't think so. Some of them Eucs, they  
18 had windows that you could shut them and --

19 Q How about when you were working up in  
20 clean-up with construction in the dry mill? Did you  
21 ever have to put anything over your mouth?

22 A No, you just went in there and you got it  
23 done and got the hell out of there, and that's --  
24 but I don't remember ever putting no handkerchief or  
25 anything over my face.

1 Q Did you ever have trouble seeing in the  
2 dry mill because of the dust?

3 A Yeah. Especially in the top floor of the  
4 dry mill. You were lucky if you could find a light  
5 bulb up there, when it was on.

6 Q Earlier, Bob, I think you said that some  
7 of the guys would talk amongst themselves about the  
8 dusty conditions? They were complaining about it  
9 when they were going to have to work in those; is  
10 that right?

11 A No, if they said something about it being  
12 dusty, I never heard them, but they -- I don't  
13 remember anybody ever talking about dust. Just that  
14 they -- It was dusty and you just had to work in it.  
15 And that was --

16 Q Where did you eat lunch?

17 A Well, when I was in clean-up we used to  
18 eat lunch in the lunch room, but any other time I...  
19 always ate lunch wherever my job was.

20 Q And you never saw any respirators hanging  
21 from nails in the lunch room?

22 A No, I don't remember that. They might  
23 have been, but I never seen them.

24 Q Okay.

25 A I sure didn't. The only thing I remember

1 A From Dr. Whitehouse.

2 Q And why did you go see Dr. Whitehouse?

3 A Well, because my chest hurt and I was so  
4 short of breath I couldn't do nothing and I didn't  
5 think I had it and I just -- Well, I talked to Roger  
6 down there. He wanted me to be a witness for  
7 somebody. And he said, if I had, you know, some --  
8 thought I had something like that, that maybe I  
9 should go see --

10 No, I don't believe he said that, but I  
11 think my sister-in-law said I should go see  
12 Whitehouse. Everybody was going over to him. He  
13 was an -- an ex -- whatever you call that. He was  
14 entitled to tell you that. And we went over to his  
15 office and they took chest x-rays, and he said,  
16 Yeah, you got it. You got it in both lungs.

17 Q You mentioned that your chest hurt?

18 A Yeah, when you cough, boy, it just felt  
19 like somebody was squashing you.

20 Q So it wasn't a steady ache, it was just  
21 when you cough?

22 A Just when you cough a lot.

23 Q So your sister is the one who recommended  
24 that you go talk to Dr. Whitehouse?

25 A Sister-in-law.

1 Q Sister-in-law.

2 A Yeah.

3 Q Who is her husband?

4 A My brother. He has passed away now.

5 Q What was his name?

6 A Phillip.

7 Q So you traveled all the way up to Spokane  
8 from Arizona to see Dr. Whitehouse?

9 A Yeah, we was going to Forks, Washington,  
10 so we made an appointment to stop and see him on the  
11 way over.

12 Q Did you ever consider seeing a  
13 pulmonologist in Phoenix?

14 A I don't even know one.

15 Q How much time passed between the  
16 conversation with your sister where she recommended  
17 you go see Dr. Whitehouse and then actually getting  
18 up to Spokane to see him?

19 A Oh, I don't know. Probably a week and a  
20 half.

21 Q Prior to seeing Dr. Whitehouse, had you  
22 all ready talked to Roger about possibly being a  
23 witness?

24 A Oh, yeah. Yes.

25 Q How many times have you seen

1 Dr. Whitehouse?

2 A Three.

3 Q Three times in the last three years?

4 A No, four times in the last three years.

5 Four times, yeah. I just seen him a week ago -- or  
6 last -- just the week before we got here.

7 Q Okay. When you last saw him, what did  
8 he -- did he tell you that your condition is getting  
9 worse, better, same?

10 A Exact words he said, It's not getting any  
11 better.

12 Q Did he say it's getting any worse?

13 A Yeah.

14 Q He did, just last week?

15 A Yep.

16 Q And is that when he told you that he  
17 thought you had five to ten years to live?

18 A Yeah, I think that was in the report he  
19 was -- he had out there.

20 Q Have you read his reports?

21 A No, I --

22 Q So you don't recall him ever telling you  
23 five to ten years?

24 A No, I think I read it on his desk or  
25 something. I'm not too sure. I don't remember.